

CCA#3-Attachment A

Amendment Twenty-Three to the Contract for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System

This Amendment Twenty-three to the Contract for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System is entered into by and between ERG Transit Systems (USA) Inc, a California corporation and wholly owned subsidiary of ERG Limited, an Australian corporation, (hereinafter referred to as the "Contractor") and each of the following seven public transportation agencies (hereinafter referred to individually as an "Agency" or collectively as the "Agencies"):

1. Central Puget Sound Regional Transit Authority ("Sound Transit")
2. King County ("King County")
3. Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
4. Pierce County Public Transportation Benefit Area ("Pierce Transit")
5. Snohomish County Public Transportation Benefit Area ("Community Transit")
6. City of Everett ("Everett")
7. State of Washington, acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

Recitals

A. Effective April 29, 2003, each of the Agencies and the Contractor entered into Contract #229944 ("Contract") to implement a Regional Fare Coordination System ("RFC System") to establish a common fare system utilizing smart card technology. The Contractor is responsible for the development, implementation, operation and maintenance of the RFC System as specified in the Contract.

B. In order to establish a new Project Schedule and provide for other changes for Phase 2 implementation, the Agencies and the Contractor have entered into that certain Contract Change Agreement #3 dated September 26, 2007. This Amendment Twenty-three is attached to, and adopted by, the Agencies and the Contractor as part of said Contract Change Agreement #3.

Amendment

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Agencies and the Contractor hereby agree to amend the Contract as follows:

1.0 System Security

Section 3.I-11, Security of RFC System, is hereby amended to read as follows:

3.I-11 Security of RFC System

11.1 Contractor shall maintain the security of the RFC System, including security for all computer systems, information and monetary transactions, in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry. Such security shall include, without limitation: (i) maintaining physical security of the RFC System, to ensure that no unauthorized person shall have access to the RFC System; (ii) creating firewalls, password protections, and other appropriate measures to protect against unauthorized access to the RFC System or to Customer information by Contractor's employees, Agency employees or third parties; (iii) protecting against penetration of security and manipulation of customer account data by Contractor's personnel, Agency personnel or third parties; and (iv) additional security measures as specified in the Services and Equipment Specifications in Divisions II and III.

11.2 Contractor shall update its security procedures as technology and security threats evolve to provide security capabilities at all times that are in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry.

11.3 Contractor shall have its security procedures and physical facilities audited by a qualified, nationally recognized firm, and Contractor shall take such actions as may be identified in such audit as necessary to comply with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry. The Contractor's initial

security audit shall consist of the following tasks at a minimum:

- a. by September 30, 2005: a review of CDRL 31 with an assessment of its adequacy and conformance with industry best practices; a review and assessment of the Contractor's existing security measures at its facilities operating the Translink system;
- b. by October 31, 2005: a detailed plan and description of the testing that will be conducted as specified in 11.3(c) below;
- c. as part of the SIT Part 1 End-to-End Testing of the RFCS (to be completed by July 27, 2006), intrusion and other security auditing activities as agreed by ERG and the Agencies.

The Contractor shall complete a second audit no later than May 31, 2007, and then shall conduct such audits by May 31 annually thereafter. The scope of work for each audit shall be submitted to the Contractor Administrator for review prior to the commencement of the audit and said work shall include but not be limited to assessing whether the actions identified in the prior audit have been taken. Subject to the confidentiality provisions of this Contract, Contractor shall direct the auditor to provide the Contract Administrator with a copy of the final report of such audit within forty-five (45) days after it is completed.

11.4 The Contractor shall report to the Contract Administrator any unauthorized use of the RFC System or unauthorized disclosure of RFCS-related data within forty-eight (48) hours after the Contractor becomes aware of such use or disclosure. In such event, the Contractor shall take such further steps as may reasonably be requested by the Contract Administrator to prevent further unauthorized use of the RFCS or data related thereto.

11.5 At all times, the Contractor shall maintain the security of the collection and clearinghouse operations in accordance with this Contract, applicable legal and regulatory requirements, and in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry.

2.0 System Backup and Disaster Recovery/Business Resumption Plan

Section 3.I-13, "System Backup and Disaster Recovery/Business Resumption Plan" is hereby amended to read as follows:

3.I-13.1 System Backup and Disaster Recovery/Business Resumption Plan"

13.1 In accordance with the Contract Document Requirements List provided in Section 6.II-11.6.1.1, the Contractor shall submit to the Contract Administrator a comprehensive System Backup and Disaster Recovery/Business Resumption Plan. The Plan shall include, but is not limited to, the following elements:

- a. A detailed explanation of protections in place at the central clearinghouse facility to protect against and mitigate the adverse impacts of power and/or communications failures, catastrophic events, or other disasters, including all on-site and remote data storage and backup procedures;
- b. A detailed explanation of the Contractor's compliance with the technical specifications for data backup and recovery provided in this Contract including, but not limited to, Sections 6.II-5.2.8 Database Management, 6.II-8.2.3 Network Management, 6.III-1.4 Data Backup and Recovery, and 6.III-3.8 FTP – Additional Security;
- c. A detailed description of the Disaster Recovery Center (DRC) which the Contractor will set up and maintain as a back-up site for the central clearinghouse facility. The DRC shall be in a location as approved by the Agencies (such approval shall not be unreasonably withheld or delayed) and is geographically separate from, and not subject to the same risks as, the location where the clearinghouse's production equipment is regularly operated. The description shall include (i) the location of the facility; (ii) the number of anticipated personnel to be located at the facility should its full operation become necessary; (iii) how the facility will be mobilized and operated; and (iv) a schedule and description of periodic, complete tests of readiness for such facility;
- d. A detailed description of the tools, processes and procedures required to activate the Business Recovery Center. All tools, processes and procedures shall be provided to the entity responsible for facility activation;
- e. Whether the Contractor plans to contract with a third party to activate and operate the Business Recovery Center. Such provision of services by a third party shall be subject to the approval of the Agencies, and shall require the third party to take reasonable steps to maintain the confidentiality of all software and data; and
- f. A detailed description of procedures to be followed by the Contractor in the event that a power and/or communications failure, catastrophic event, or other disaster occurs either locally in the Puget Sound region or at the contractor's production server location. Such procedures shall include a description of the conditions for Disaster Recovery Center activation, and shall describe specific activation processes.

13.2 Not later than the date of commencement of the BETA Test, the Contractor shall have set up and rendered operational a facility in the Agency-approved location that is capable of replicating centralized services and data related to the operation of the RFC System. Prior to the Milestone of "Completion of Complete System Commissioning," the Contractor shall provide to the Agencies an updated System Backup and Disaster Recovery/Business Resumption Plan and otherwise document compliance with the updated Plan for which the Agencies have issued a NAC. Subject to agreement by the Parties on a subsequent Change Order, the Contractor shall conduct a demonstration of the ability to provide RFCS functionality from the DRC.

13.3 Contractor shall notify the Contract Administrator within four (4) hours of a power and/or communications failure, catastrophic event, or other disaster.

13.4 In the event that a power and/or communications failure, catastrophic event, or other disaster prevents operations at the central clearinghouse facility and/or disrupts communications to the RFCS, the Contractor shall:

- a. Immediately and automatically place the RFCS components in off-line operation such that fare sales and collection can continue without interruption;
- b. Within twenty-four (24) hours, activate the Disaster Recovery Center and provide all RFCS on-line and off-line functionality with the exception of second tier customer service;
- c. Within twenty-four (24) hours, provide Contractor-employed staff on-site to verify correct operation of the Disaster Recovery Center. Within this period the Contractor shall also assume on-going operation of the Disaster Recovery Center until such time as the central clearinghouse and full system operation is restored; and
- d. Within thirty (30) days, restore full clearinghouse and system operation.

3.0 Deliverable Review Times

Section 3.1-27.5 is amended to add the following "Section 3.1-27.5 (Phase 2)." This Agreement shall not be construed as altering the review time periods for any other Agency reviews, which shall remain as provided in the Contract unless otherwise modified in writing.

3.I-27.5 (Phase 2) Except as provided in Section 3.I-27.6 or otherwise agreed by the Parties in writing, the following submittal and review process shall apply to the Document Revisions and other Phase 2 deliverables specified as required contract documents in Figure II-11.6. Each deliverable submittal or resubmittal shall be submitted to the Contract Administrator and consist of nine (9) hard copies of the deliverable and nine (9) copies in CD ROM format, unless otherwise specified in this Contract for certain deliverables. The hard copies provided by the Contractor shall be printed on 8 1/2" x 11" standard letter-size paper or 8 1/2" x 14" legal-size paper unless otherwise agreed to by the Contract Administrator.

a. Unless otherwise specified, the Contractor shall submit a deliverable at least fifty-four (54) days in advance of the scheduled completion date for said deliverable specified in the approved Baseline Project Schedule. Provided, however, satisfaction of this submittal deadline shall not relieve the Contractor of its obligation to complete the task by the date specified in the approved Baseline Project Schedule.

b. For the first 21 days after receipt of the deliverable, the Agencies will review and prepare questions/comments for discussion. Between 22 and 25 days after the Contractor submits the copies of the deliverable to the Contract Administrator, the parties' representatives shall meet to discuss the deliverable. All meetings shall be held in the Seattle area unless otherwise agreed by the Contract Administrator. The Contractor shall be represented at each such meeting by personnel with sufficient technical knowledge and expertise to address all aspects and contents of the deliverable.

c. If the deliverable has been satisfactorily completed in accordance with the provisions of the Contract Documents (hereinafter, "Contract requirements"), the Contract Administrator shall issue a Notice of Apparent Completion ("NAC"). If the deliverable has not been satisfactorily completed in accordance with the Contract requirements, the Contract Administrator shall provide written comments to the Contractor no later than thirty (30) days after submission of the deliverable. If the deliverable requires revision, the Contractor shall submit a revised deliverable within nine (9) days after receipt of the written comments.

d. If the deliverable has not been satisfactorily completed in accordance with the Contract requirements, the Contract Administrator (on behalf of the Agencies) may require further iteration(s) of the deliverable from the Contractor. If further iterations are required, the Contract Administrator will provide, within ten (10) days of receipt of the last version, written

comments on the aspects of the deliverable which the Agencies do not regard as satisfactorily completed in accordance with the Contract requirements. The Contractor shall continue to modify and submit the deliverable within five (5) days after receiving Agency comments until the deliverable has been satisfactorily completed in accordance with the Contract requirements, at which point the Contract Administrator shall issue a NAC.

e. If the parties disagree as to whether a deliverable has been satisfactorily completed in accordance with the Contract requirements, the Contractor may submit the issue to the Dispute Review Board in accordance with Section 3.I-34 of this Contract.

f. If the Contractor is not issued a NAC for a deliverable by the date specified for completion in the approved Baseline Project Schedule, the Agencies, in addition to any other remedies, may withhold up to 50% of any project management and other payments due for any Work, with no interest accruing thereon, until the deliverable has been satisfactorily completed in accordance with the Contract requirements, at which point a NAC shall be issued for the deliverable.

4.0 Payment Procedures

4.1 Section 3.I-76.3.1, "Payment Caps," is amended to read as follows:

76.3.1 Payment Caps

Notwithstanding any other provisions of this Contract except Section 3.I-76.3.9 below, the total of all payments made to the Contractor, including but not limited to the Project Management and Performance Security payments , shall be limited as follows:

a. From the Notice to Proceed through the Beta Test Acceptance Milestone Payment, the Agencies shall pay no more than 55% of the total of all payments due under the Contract through Full System Acceptance.

b. Once the 55% cap is reached, the Agencies shall pay no more until the successful achievement of the "Completion of Complete System Commissioning" Milestone for all the Agencies' equipment, in accordance with Section 6.II-11.4.5 and Change Order 26, Section 3.0. Once that Project Milestone is reached, payments otherwise due shall be made but no more than 65% of the total of all payments due under the Contract through Full System Acceptance (except monthly operating fees under Section 76.3.9) shall be paid prior to Full System Acceptance.

4.2 Section 3.I-76.3.5, "Equipment," is amended to read as follows:

76.3.5 Equipment

- a. The price for each type of equipment provided through Full System Acceptance shall be the price specified in Exhibit 9, Section II based on the estimated total quantity for all Agencies specified in Appendix A for each type of equipment.
- b. Payment for equipment provided (delivered, installed and operating) under Phase I and covered by the Beta Test will be payable upon Beta Test Acceptance. Provided, however, King County and King County operated Sound Transit equipment provided (delivered, installed and operating) prior to Beta Test Acceptance but not covered by the Beta Test shall be payable at the same time as that equipment specified below in Section 76.3.5(c).
- c. For King County Metro ONLY, payment for its equipment purchased (delivered, installed and operating) after Beta Test Acceptance will be payable upon successful completion of complete system commissioning for all the Agencies' equipment in accordance with section 6.II-11.4.5, "System Commissioning". Provided, however, upon the parties signing of CCA #3 by September 26, 2007, King County Metro (KCM) will pay \$1M for certain units (to be determined) of Phase 2 On-board equipment quantities, which payment would not otherwise be due until Contractor achieves the Milestone for "Completion of Complete System Commissioning." (The Contractor agrees that such payment will have no effect on warranty for KCM equipment and nothing will be construed as reducing or limiting the Contractor's obligations under the Contract to maintain such equipment without additional compensation through Full System Acceptance and thereafter during the Warranty Period.)
- d. For all other Agencies, full payment for their equipment purchased (delivered, installed and operating) after Beta Test Acceptance will be payable upon Full System Acceptance ("*Full System Acceptance*" is defined in 6.II.11(g)).
- e. for Washington State Ferries ONLY, payment for one hundred percent (100%) of its Gate Adaption Kits (GAK) hardware as specified in Exhibit 9, Section II I., and delivered to WSF is payable upon completion of Beta Test Readiness Acceptance. The GAK hardware includes, but is not limited to, the GAK Fare Processor and Target.

4.3 Section 76.3.8, "Training" is amended to read as follows:

76.3.8 Training

- a. The training materials (CDRL 29), operations manuals (CDRL 34) and maintenance manuals (CDRL 35) were incomplete and otherwise deficient for the Beta Readiness Milestone. In light of these deficiencies, the Parties agree that only \$121,000 (50% of the Contract price of \$242,000 specified in Contract Exhibit 9, Section VII, for training course development) shall be payable upon issuance of a NAC for Beta Test Acceptance. During Phase 2, at no additional cost to the Agencies, the Contractor shall provide the required training videos (or other media) and update the operations manuals, maintenance manuals, and Agency-customized training materials to include: technical updates; lessons learned during the Beta Test; and additional content that was omitted in

the current versions but is critical to the student's ability to comprehend the materials and prepare them for daily system operations.

b. The videos (or other media) and revised manuals and materials shall be submitted in accordance with the new Project Schedule and the process for Agency review and issuance of NACs provided in change Order 26. . These videos (or other media), manuals and training materials shall thereafter be updated to reflect any design changes arising out of Phase 2 FAT, SIT and RTB user testing. The remaining \$121,000 shall be due and payable upon Full System Acceptance provided a NAC has been issued for said videos (or other media), manuals and training materials.

c. Regarding training sessions, the Parties agree that only \$105,875 (50% of the total price of \$211,750 reflected in the Training Sessions Matrix attached as Exhibit A to the "Agreement for Issuance of Conditional Notice of Apparent Completion (NAC) for Beta Test Readiness Milestone") shall be payable upon issuance of a NAC for Beta Test Acceptance. The remaining balance of \$105,875, shall be due and payable upon Full System Acceptance provided a NAC has been issued for all Phase 2 training sessions.

d. During Phase 2, at no additional cost to the Agencies, the Contractor shall:

a. Conduct a "dry-run" of all Phase 2 training sessions for a focus group of Agency trainers in order to ensure that the Contractor's trainers, course content, devices and materials are satisfactory before Agencies mobilize their personnel for training activities.

b. Conduct the Remedial Training Sessions, as identified in Exhibit B attached to the "Agreement for Issuance of Conditional Notice of Apparent Completion (NAC) for Beta Test Readiness Milestone," no later than sixty (60) days prior to the commencement of the applicable Agency-delivered training classes.

c. Provide a subject matter expert (SME) who is knowledgeable and experienced in the subject matter to either instruct or fully participate in the instruction of each Remedial Training session as referenced in (b) above. This person shall be fully knowledgeable of the RFCS System, the key learning objectives of the subject, and the relevancy of the subject matter to the operations of the RFC System.

d. Provide at each Agency's facilities demonstration equipment and/or systems that fully and accurately replicate RFCS functionality for each course as appropriate to support a "hands on" learning experience, and ensure that the student can perform all business functions in an operating environment. (*NOTE – per Contract Change Agreement #2, Section 2.0 (a), the Customer Service Terminal Training Mode must be completed and operational on actual CST terminals prior to the first date of train-the-trainer activities in Phase 2.*)

4.4 A new section, Section 76.3.12, "Phase 2 Development and Testing Period" is amended to read as follows:

76.3.10 Phase 2 Development and Testing Period

The Agencies shall pay a monthly lump-sum amount of \$25,035 to the Contractor in full and complete payment for the Contractor providing access to the RTB, the "live" RFCS system, and related services, all in accordance with Section 6.II- 11.7.2(b), during the Phase 2 Development and Testing period. Said monthly charge will commence thirty days (30) prior to the first RFCS Release being made available for user testing in the

RTB in March of 2008, with a pro rata reduction for any days in a month prior to the start of the thirty (30) days. Except as provided below, the monthly charge will be due for each month thereafter that such facilities, systems and services are satisfactorily provided until the end of the month following the final RFCS Release passing user testing in the RTB. Provided, however, said monthly charge shall not be due for:

- a. a month in which the RTB was not accessible as needed by the Agencies; or
- b. a month in which the Production System was not fully operating and available for Agency use on at least 18 Agency business days; or
- c. any added month beyond the total number of months allocated in the approved Schedule between the month prior to the first RFCS Release entering the RTB and the month following final RFCS Release passing user testing in the RTB, unless such an additional month is due to an Agency-caused delay or resulting directly from an agreed Change Order.

The Contractor may invoice the Agencies for said monthly charge upon the first RFCS Release having passed user testing in the RTB and thereafter, on not more often than a monthly basis.

5.0 Project Schedule

5.1 The Parties agree to the "High Level" Phase 2 Schedule attached hereto and made a part hereof as "Amendment 23--Appendix A." The Contractor shall provide a more detailed version of said "High Level" Phase 2 Schedule for the Agencies' review and approval at the same time the Overall RFCS Release Plan is submitted but not later than October 22, 2007. At a minimum, this second version shall add the following activities and their respective start dates, finish dates and relationships to the other activities:

- A. add FAT Report delivery & review
- B. add SIT Report delivery & review
- C. add task for delivery & finalization of "As Built" Documents Change Request
- D. add Complete System Commissioning Plan delivery & review
- E. add Complete System Commissioning Report delivery & review
- F. add detailed tasks for each 54 day document review/approval process task
- G. add card rollout tasks: (1) Card forecast due from agencies; (2) Card graphic design due from agencies; and (3) ERG card order submitted to vendor.
- H. update all agency training tasks to appear in schedule such that the end of training is prior to go-live.

Within fifteen (15) days after this second version of the "High Level" Phase 2 Schedule is submitted, the Contractor shall provide in CD format for Agency review and approval a fully-detailed new Project Schedule, consistent with the expanded October 2007 version of "Amendment 23--Appendix A", that will become the new Exhibit 8, Project Schedule. Provided, however, the Parties acknowledge that this new Project schedule will not necessarily reflect actual start and/or finish dates that have occurred prior to this Amendment.

~~5.2—The Parties agree to the new Attachment H, "Key Completion Date Summary," attached hereto and made a part hereof as "Amendment 23--Appendix B."~~

6.0 Price Schedule

Exhibit 9, Price Schedule, Section VI(2), is amended to read as follows:

2. PHASE 2 (after Beta Test Acceptance)

A. DESIGN, DEVELOPMENT AND TESTING	\$1,917,654
<p>This fixed price constitutes the full amount due for all the Work arising from the Phase 2 Revisions as identified in Change Order 26, Section 4 (CCA#3-Attachment B), including but not limited to: all design, development, testing related to the DEVIs and all revisions needed to implement the functionality identified in the RFIs attached to said Change Order 26; all project management, through Full System Acceptance, arising from any and all new Work added by said Change Order 26; and any revisions to, and production of, manuals and training materials to reflect the new Work added by said Change Order 26.</p> <p>For the Agencies' internal cost allocation purposes only, the fixed price is allocated as follows:</p> <p>Regional Costs: \$542,707</p> <p>Agency-specific Costs: \$434,480 consisting of the following:</p> <p>CT/ET/KCM/PT-specific: \$18,430</p> <p>KCM-specific: \$18,028</p> <p>ST-specific: \$16,417</p> <p>WSF-specific: \$381,605</p>	
B. ACCEPTANCE TESTING	\$556,502
TOTAL (B):	\$2,474,156
GRAND TOTAL (A + B)	\$13,659,691